

July 8, 2005

Karen Gorman  
Chief Ethics Office  
Metropolitan Transportation  
Authority  
One Gateway Plaza  
Los Angeles, CA 90012-2952

**Re: Your Request for Advice**  
**Our File No. A-05-139**

Dear Ms. Gorman:

This letter is in response to your request for advice regarding provisions of the Political Reform Act (the "Act").<sup>1</sup>

### **QUESTION**

Would the payment you describe, compensating you for participating in a project conducted by a marketing research firm, constitute an honorarium prohibited by the Act?

### **CONCLUSION**

No. The payment would be "earned income," not a prohibited "honorarium."

### **FACTS**

You are the Chief Ethics Officer (a designated position with full disclosure under your conflict of interest code) at the Los Angeles County Metropolitan Transportation Authority (MTA). MTA is the transportation coordinator and provider of bus, light rail, subway, and similar services in Los Angeles County. Prior to your current employment, you were paid from time to time to evaluate cars for a marketing research firm in Orange County where you live. The research firm initially obtained your name and asked you to evaluate cars because you purchased a Mercedes Benz in 1997.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

This firm recently contacted you to assist in their marketing research on radio station preferences. After responding to questions regarding your own radio listening patterns – none of which inquired into or otherwise related to your employment – the firm invited you to work on this project. The compensation offered to all persons who participate in this project will be \$70 for 2 hours and 45 minutes of work, which will be performed at the firm's Orange County offices. You were told that persons arriving at least 15 minutes early will also be entered in a drawing for an additional \$100, evidently as an incentive for timely arrival.

Your work for this firm in the past involved driving cars, providing verbal input on the subject under study, answering written questionnaires, entering information on a computer about your observations, experiences, and preferences concerning the products evaluated or other products you have used, or participating in a group discussion about your experiences with the product, your buying habits, and similar matters. You expect that your services in the upcoming radio station project will be of a similar nature. You have never given a speech for the firm and will not do that if you perform work on this radio station project.

You are certain that the reason for offering you the opportunity to participate in this study is in no way related to your status as a government employee. You believe that this firm does not now, and has not within the period covered by your agency's records, done business with your agency. You have no knowledge that it has sought or is seeking to do business with your agency, and you have no reason to believe that the firm targets government employees for any of its research projects.

### ANALYSIS

Section 89502(c) prohibits any designated employee of a state agency from accepting any honorarium from any source, if the employee would be required to report the receipt of income from that source on his or her statement of economic interests. "Honorarium" is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501(a).)

Section 89501(b)(1) provides, however, that "honorarium" does not include income earned for personal services customarily provided in connection with the practice of a bona fide business, trade, or profession, unless the sole or predominant activity of the business or profession is making speeches. (See also section 82030.5.) As we explained a number of years ago: "Earned income differs from an honorarium because a payment characterized as 'earned income' is based on the market value of services rendered, while an honorarium reflects values associated with the status of the speaker." (*Rozsa Advice Letter*, No. A-98-028.)

As we pointed out in the *Rozsa Advice Letter*, the "bona fide business, trade or profession" specified in section 89501(b)(1) includes personal services furnished during

occasional periods of paid employment by an established business entity, and while you have been asked to supply information and opinions to the firm, this input has never taken the form of a “speech.” From your description of the services you anticipate providing to the marketing research firm, we conclude that its payment to you would not be a prohibited honorarium, since it would be earned income for personal services customarily provided in connection with the operation of a bona fide business.<sup>2</sup>

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: Lawrence T. Woodlock  
Senior Counsel, Legal Division

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<sup>2</sup> Your account of the facts implies, but does not expressly state, that the firm would pay all participants in this study – including you – a flat rate for their work, with equal chances for one early arrival to win a \$100 bonus. Therefore we assume that you will be compensated at the presumptive “market rate” for your services. If this is not correct, please call or write to us for further assistance.